IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 6006 of 2005

Date of decision: 08.12.2006

Gurmej Kaur and others

..... Petitioners.

Versus

Karam Singh and another

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Dr. Sushil Gautam, Advocate for
Mr.V.G. Dogra, Advocate
for the petitioners.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed challenging order dated 23.09.2005 vide which the trial Court struck off the defence of defendant nos. 1 to 3 as also disregarded the written statement filed by them on the ground that the same was filed after 90 days of their first appearance.

To reach this conclusion the trial Court has relied upon judgments of the Bombay High Court and the Karnataka High Court taking a view that the provisions of Order 8 Rule 1 Code of Civil Procedure are mandatory and under these circumstances the time for filing written statement can not be extended.

In my opinion the order of the trial Court cannot be sustained. It has now been held by the Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu v. Union of India 2005(3) RCR (Civil) 530** that the period of 90 days prescribed under Order 8 Rule 1 of Code of Civil Procedure is not mandatory. The court can extend the time if the facts of the case so justify.

In the present case the petitioners-defendants were served on 13.01.2004 and written statement was filed on 28.05.2004 . The same was thus filed after about four months of the first appearance of the petitioners. I thus do not find a case where the defence of defendant nos. 1 to 3 should be struck off as there is no unreasonable delay in filing the written statement. Accordingly the order dated 23.09.2005 is therefore set aside. The written statement filed by the petitioners-defendants in the suit shall be permitted to be taken on record and petitioner shall be permitted to defend the suit.

The present revision petition is allowed in the aforesaid terms.

December 08 , 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**